THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No.25545 of 2006

Between:

Amarapalli Rambabu.

.. PETITIONER

and

Government of A.P.,
Excise Department and others.

..
RESPONDENTS

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ORDER:

The petitioner is a resident of Bhimavaram. The 5th and 6th

respondents have applied for grant of 2B Bar licences for establishing two separate Bars and Restaurants at D.Nos.21-11-47(3) and 20-11-34 respectively.

It is stated that the said two Bars and Restaurants are located in a residential area as well as within 100 metres from the premises of Lutheran High School, Bhimavaram-7th respondent. The gate of the 7th respondent school is about 70 and 80 metres respectively from the proposed Bars and Restaurant premises. When the 5th and 6th respondents were making efforts to get the bar licence contrary to A.P. Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short "Bar Rules"), the petitioner and other residents approached respondents 2 to 4 and submitted their objections on 04-07-2006 and on 02-08-2006. But, without considering the said objections, the 4th respondent recommended for grant of licence in favour of respondents 5 and 6 and, therefore, the petitioner filed W.P.No.24327 of 2006 before this court seeking to declare the action of the 2nd respondent in according permission in favour of the 5th and 6th respondents for establishing Bars and Restaurants as illegal. However, this court disposed of the said writ petition on 22-11-2006 directing the 3rd respondent to consider the objections raised by the petitioner herein before granting 2B Bar Licences in favour of the 5th and 6th respondents. However, the 3rd respondent passed the impugned order in Rc.No.407/2006/A4, dated 02-12-2006, rejecting the said objections. Aggrieved by the said order, this writ petition has been filed.

Before going into the merits of the case, it is relevant to extract relevant portion of the order, dated 02-12-2006, in Rc.No.407/2006/A4, which is as follows:

> "The main objections of the petitioner are the existence of M/s.Vamsi Krishna Restaurant & Bar, Bhimavaram at D.No.21-11-47/3 at about 70 mts. distance to Luthern High School and existence of residential portions in the 1st floor of M/s.Kanaka Durga Restaurant & Bar at D.No.21-11-34, Rest House road area of Bhimavaram Municipality. These objections will not attract rules existing for the year 2006-07 and the petition is baseless.
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> Therefore, Sri Amarapalli Rambabu (petitioner) is hereby informed that since the objections raised were found baseless and not against the rules existing to grant of 2B Bar Licenses for the year 2006-07. Hence, the objections against the grant of 2B Bars at Rest House Road area of Bhimavaram Municipality are hereby rejected."

It is the case of the petitioner that though specific objections have been raised by him with regard to the location of the said Bars within a prohibited distance of 100 metres, particularly in a residential area, but, the objections have not been specifically considered on the ground that those objections will not attract the rules existing for the year 2006-07.

The relevant provision prescribing restriction for grant of 2 Bar Licence is Rule 6 of Bar Rules.

As per Rule 6 (1) (ii) of Bar Rules, unless the premises where 2B bar is proposed to be established, is situated beyond the vicinity of 100 metres from any educational institution recognized by the Government, the bar licence shall not be issued.

In so far as the Municipal Corporation area is concerned, the prohibited distance is 50 metres. There is no dispute that Bhimavaram is not a Corporation but it is only a Municipality. Therefore, the distance between a Bar and an educational Institution should be 100 metres.

As per Rule 6 (1) (iii) of Bar Rules, unless the premises where 2B Bar is proposed to be established, is situated beyond the vicinity of 500 metres of predominantly residential. But, however, if the proposed 2B Bar

is located on the main road used for shopping purposes and it is situated within 500 metres, then, the licence can be granted.

No definite finding has been given as to whether the said Bars are situated on the main road used for shopping purposes so as to enable the authorities to say as to whether the provisions of Rule 6 (1) (iii) of Bar Rules are applicable or not. Similarly, it is stated that the 3rd respondent has also not stated as to how Rule 6 (1) (iii) of Bar Rules is not applicable in the instant case.

A counter has been filed by the 4th respondent on behalf of respondents 1 to 4 stating that the main objection of the petitioner is that the existence of the 5th respondent bar is 70 metres from the Lutheran High School and the existence of the 6th respondent Bar is within 500 metres of predominantly residential area. But, during the personal visit of the 3rd respondent, it has been observed that main entrance gate of the said high school is about 1 kilometre from the proposed Bars. The small gate belonging to the 7th respondent high school opposite to the proposed bar is at a distance of 19 metres but the said small gate is not being used by the school students and it was meant only for watchman. It is stated that as per Rule 6(1)(ii) and (iii), there is no prohibition for grant of licence, if the said premises is situated within the vicinity of 100 meters from any educational institution recognized by the Government and within 500 meters of predominantly residential area but licences may however be sanctioned if the proposed premises is located on a main road used for shopping purposes.

A perusal of Rule 6(1) (ii) of Bar Rules makes it clear that even if the said premises is situated on the main road, but if the same is within the vicinity of 100 metres from the educational institution, this condition

cannot be relaxed.

But, as per Rule 6(1)(iii) of Bar Rules, if the proposed bar premises is situated within 500 metres of predominantly residential area and if the said premises is located on the main road used for shopping purpose, then only the restriction of 500 metres of predominantly residential area will not apply.

The counter affidavit goes to show that they have relaxed Rule 6(1)(iii) on the ground that the said Bars of 5th and 6th respondents are located on the main road.

Even if the Bars are located on the main road, if there is a recognized high school situated within the vicinity of 100 metres, the respondents cannot grant licence.

However, except baldy stating that the said objections cannot attract rules existing in the year 2006-07, the 3rd respondent has not specifically dealt with the same as to how they will not come under the purview of the provisions. Apart from that, the impugned order does not specify as to the non-applicability of the provisions of Rule 6 (1) (ii) and (iii) of Bar Rules and also the reasons under which the objections were brushed aside. Therefore, I am of the opinion that the said impugned order cannot be sustained.

Accordingly, this writ petition is allowed setting aside the impugned order and the matter is remitted to the 3rd respondent to consider and dispose of the objections raised by the petitioner afresh by dealing with each and every objection in consonance with Rule 6 of Bar Rules, after giving a reasonable opportunity to the petitioner as well as the 5th to 7th respondents within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

27-02-2007

Prv